

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (Amended After Comments)

5 907 KAR 1:835. Michelle P. waiver services and reimbursement.

6 RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R.  
7 440.180

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606,  
9 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family  
11 Services, Department for Medicaid Services has responsibility to administer the  
12 Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any  
13 requirement that may be imposed, or opportunity presented, by federal law to qualify for  
14 federal Medicaid funds. This administrative regulation establishes the coverage and  
15 reimbursement provisions for Michelle P. waiver services.

16 Section 1. Definitions. (1) "1915(c) home and community based waiver services  
17 program" means a Kentucky Medicaid program established pursuant to and in  
18 accordance with 42 U.S.C. 1396n(c).

19 (2) "ADHC" means adult day health care.

20 (3)[(2)] "ADHC center" means an adult day health care center licensed in accordance  
21 with 902 KAR 20:066.

1       (4)[(3)] "ADHC services" means health-related services provided on a regularly-  
2 scheduled basis that ensure optimal functioning of a participant[~~Michelle P. waiver~~  
3 ~~recipient~~] who does not require twenty-four (24) hour care in an institutional setting.

4       (5)[(4)] "Advanced practice registered nurse" or "APRN" means a person who acts  
5 within his or her scope of practice and is licensed in accordance with KRS 314.042.

6       (6)[(5)] "Assessment team" means a team which:

7       (a) Conducts assessment or reassessment services; and

8       (b) Consists of:

9       1. Two (2) registered nurses; or

10      2. One (1) registered nurse and one (1) of the following:

11      a. A social worker;

12      b. A certified psychologist with autonomous functioning;

13      c. A licensed psychological practitioner;

14      d. A licensed marriage and family therapist; or

15      e. A licensed professional clinical counselor.

16      (7)[(6)] "Behavior support specialist" means an individual who has:

17      (a) A master's degree from an accredited institution with formal graduate course  
18 work in a behavioral science; and

19      (b) At least one (1) year of experience in behavioral programming.

20      (8)[(7)] "Blended services" means a nonduplicative combination of Michelle P. waiver  
21 services identified in Section 6 of this administrative regulation and  
22 participant[~~consumer~~]-directed[~~option~~] services identified in Section 7 of this  
23 administrative regulation provided pursuant to a participant's[~~recipient's~~] approved

1 person-centered service plan~~[of care]~~.

2 ~~(9)[(8)]~~ "Budget allowance" is defined by KRS 205.5605(1).

3 ~~(10)[(9)]~~ "Certified psychologist" means an individual who is a certified psychologist  
4 in accordance with KRS 319.056.~~[(10) "Consumer" is defined by KRS 205.5605(2).]~~

5 ~~(11) ["Consumer-directed option" or "CDO" means an option established by KRS~~  
6 ~~205.5606 within the home and community-based service waivers which allows~~  
7 ~~recipients to:~~

8 ~~(a) Assist with the design of their programs;~~

9 ~~(b) Choose their providers of services; and~~

10 ~~(c) Direct the delivery of services to meet their needs.~~

11 ~~(12)]~~ "Covered services and supports" is defined by KRS 205.5605(3).

12 ~~(12)[(13)]~~ "DCBS" means the Department for Community Based Services.

13 ~~(13)[(14)]~~ "Department" means the Department for Medicaid Services or its  
14 designee.

15 ~~(14)[(15)]~~ "Developmental disability" means a severe, chronic disability that:

16 (a) Is attributable to:

17 1. Cerebral palsy or epilepsy; or

18 2. Any other condition, excluding mental illness, closely related to an intellectual  
19 disability resulting in impairment of general intellectual functioning or adaptive behavior  
20 similar to that of an individual with an intellectual disability and which requires treatment  
21 or services similar to those required by persons with an intellectual disability;

22 (b) Is manifested prior to the individual's 22nd birthday;

23 (c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;
2. Understanding and use of language;
3. Learning;
4. Mobility;
5. Self-direction; or
6. Capacity for independent living.

~~(15)~~~~(46)~~ "Direct care staff" means an individual hired by a Michelle P. waiver provider to provide services to the participant~~recipient~~ and who:

- (a)
  - 1.a. Is eighteen (18) years of age or older; and
  - b. Has a high school diploma or GED; or
  - 2.a. Is twenty-one (21) years of age or older; and
  - b. Is able to communicate with a participant~~recipient~~ in a manner that the participant~~recipient~~ or participant's~~recipient's~~ legal representative or family member can understand;
- (b) Has a valid Social Security number or valid work permit if not a U.S. citizen;
- (c) Can understand and carry out simple instructions;
- (d) Has the ability to keep simple records; and
- (e) Is managed by the provider's supervisory staff.

~~(16)~~~~(47)~~ "Electronic signature" is defined by KRS 369.102(8).

~~(17)~~~~(48)~~ "Federal financial participation" is defined in 42 C.F.R. 400.203.

~~(18)~~~~(49)~~ "Home health agency" means an agency that is:

1 (a) Licensed in accordance with 902 KAR 20:081; and

2 (b) Medicare and Medicaid certified.

3 (19)~~[(20)]~~ "ICF-IID" means an intermediate care facility for individuals with an  
4 intellectual disability.

5 (20)~~[(21)]~~ "Intellectual disability" means an individual has:

6 (a) Significantly sub-average intellectual functioning;

7 (b) An intelligence quotient of seventy (70) or below;

8 (c) Concurrent deficits or impairments in present adaptive functioning in at least two  
9 (2) of the following areas:

10 1. Communication;

11 2. Self-care;

12 3. Home living;

13 4. Social or interpersonal skills;

14 5. Use of community resources;

15 6. Self-direction;

16 7. Functional academic skills;

17 8. Work;

18 9. Leisure; or

19 10. Health and safety; and

20 (d) Had an onset prior to eighteen (18) years of age.

21 (21) "Intellectual disability professional" means an individual who:

22 (a) Has at least one (1) year of experience working with individuals with an  
23 intellectual or developmental disability;

1 (b) Meets the personnel and training requirements established in Section 2 of this  
2 administrative regulation; and

3 (c)1. Is a doctor of medicine or osteopathy;

4 2. Is a registered nurse; or

5 3. Holds a bachelor's degree from an accredited institution in a human services field.

6 (22) "Level of care determination" means a determination that an individual meets  
7 the Michelle P. waiver service level of care criteria established in Section 5 of this  
8 administrative regulation.

9 (23) "Licensed clinical social worker" means an individual who meets the licensed  
10 clinical social worker requirements established in KRS 335.100.

11 (24) "Licensed marriage and family therapist" or "LMFT" is defined by KRS  
12 335.300(2).

13 (25)~~(24)~~ "Licensed practical nurse" or "LPN" means a person who:

14 (a) Meets the definition of KRS 314.011(9); and

15 (b) Works under the supervision of a registered nurse.

16 (26)~~(25)~~ "Licensed professional clinical counselor" or "LPCC" is defined by KRS  
17 335.500(3).

18 (27)~~(26)~~ "Licensed psychological associate" means an individual who meets the  
19 requirements established in KRS 319.064.

20 (28)~~(27)~~ "Licensed psychological practitioner" means an individual who:

21 (a) Meets the requirements established in KRS 319.053; or

22 (b) Is a certified psychologist with autonomous functioning.

23 (29)~~(28)~~ "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(30) "MWMA [portal]" means the Kentucky Medicaid Waiver Management Application internet portal located at <http://chfs.ky.gov/dms/mwma.htm>.

~~(31)[(29) "Michelle P. waiver recipient" means an individual who:~~

~~(a) Is a recipient as defined by KRS 205.8451(9);~~

~~(b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and~~

~~(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.~~

~~(30)] "Normal babysitting" means general care provided to a child which includes custody, control, and supervision.~~

(32)[(31)] "Occupational therapist" is defined by KRS 319A.010(3).

(33)[(32)] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(34) "Participant" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(35) "Participant-directed services" or "PDS" means an option established by KRS

205.5606 within the 1915(c) home and community based waiver services programs that allows **participants [recipients]** to receive non-medical services in which the individual:

(a) Assists with the design of the program;

(b) Chooses the providers of services; and

(c) Directs the delivery of services to meet his or her needs.

(36)[(33)] "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(37) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 8 of this administrative regulation.

(38)[(34)] "Physical therapist" is defined by KRS 327.010(2).

(39)[(35)] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(40)[(36)] "Physician assistant" or "PA" is defined by KRS 311.840(3).

(41)[(37)] ~~Plan of care" or "POC" means a written individualized plan developed by:~~

(a) ~~A Michelle P. waiver recipient or a Michelle P. waiver recipient's legal representative;~~

(b) ~~The case manager or support broker; and~~

(c) ~~Any other person designated by the Michelle P. waiver recipient if the Michelle P. waiver recipient designates another person.~~



1     ~~(38)~~] "Plan of treatment" means a care plan used by an ADHC center.

2     ~~(42)~~~~(39)~~] "Psychologist with autonomous functioning" means an individual who is  
3 licensed in accordance with KRS 319.056.

4     ~~(43)~~~~(40)~~] "Qualified professional in the area of intellectual disabilities" is defined by  
5 KRS 202B.010(12).

6     ~~(44)~~~~(41)~~] "Registered nurse" or "RN" means a person who:

7         (a) Meets the definition established in KRS 314.011(5); and

8         (b) Has at least one (1) year of experience as a licensed practical nurse or a  
9 registered nurse.

10    ~~(45)~~~~(42)~~] "Representative" is defined by KRS 205.5605(6).

11    ~~(46)~~~~(43)~~ "SCL waiting list individual" means an individual on the Supports for  
12 Community Living (SCL) waiting list pursuant to 907 KAR 12:010, Section 7.

13    ~~(44)~~] "Sex crime" is defined by KRS 17.165(1).

14    ~~(47)~~~~(45)~~] "Social worker" means a person with a bachelor's degree in social work,  
15 sociology, or a related field.

16    ~~(48)~~~~(46)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

17    ~~(49)~~~~(47)~~] "State plan" is defined by 42 C.F.R. 400.203.

18    ~~(50)~~~~(48)~~] "Supervisory staff" means an individual employed by the Michelle P. waiver  
19 provider who shall manage direct care staff and who:

20         (a)1.a. Is eighteen (18) years of age or older; and

21         b. Has a high school diploma or GED; or

22         2. Is twenty-one (21) years of age or older;

23         (b) Has a minimum of one (1) year experience in providing services to individuals

1 with an intellectual or developmental disability;

2 (c) Is able to adequately communicate with the participants~~[recipients]~~, staff, and  
3 family members;

4 (d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and

5 (e) Has the ability to perform required record keeping.

6 ~~(51)~~~~[(49)]~~ "Support broker" means an individual chosen by a participant~~[consumer]~~  
7 from an agency designated by the department to:

8 (a) Provide training, technical assistance, and support to the participant~~[a consumer]~~;  
9 and

10 (b) Assist the participant [a] ~~[consumer]~~ in any other aspects of PDS~~[CDO]~~.

11 ~~(52)~~~~[(50)]~~ "Support spending plan" means a plan for a participant~~[consumer]~~ that  
12 identifies the:

13 (a) PDS~~[CDO services]~~ requested;

14 (b) Employee name;

15 (c) Hourly wage;

16 (d) Hours per month;

17 (e) Monthly pay;

18 (f) Taxes;

19 (g) Budget allowance; and

20 (h) **Twelve (12)** ~~[Six (6)]~~ month budget.

21 ~~(53)~~~~[(51)]~~ "Violent crime" is defined by KRS 17.165(3).

1 **(54) “Voluntary moratorium” means a provider’s voluntary agreement to not**  
2 **serve any new (to the provider) 1915(c) home and community based waiver ser-**  
3 **vices participants.**

4 Section 2. ~~Non-PDS[Non-CDO]~~ Provider Participation Requirements. (1) In order to  
5 provide Michelle P. waiver services, excluding participant-[consumer] directed[option]  
6 services, a provider shall be:

7 (a) Licensed in accordance with:

8 1. 902 KAR 20:066 if an adult day health care provider;

9 2. 902 KAR 20:078 if a group home;

10 3. 902 KAR 20:081 if a home health agency; or

11 4. 902 KAR 20:091 if a community mental health center; or

12 (b) Certified by the department **in accordance with 907 KAR 12:010**~~[in accordance~~  
13 ~~with 907 KAR 12:010, Section 3,~~ if the provider’s type is not listed in paragraph (a) of  
14 this subsection.

15 (2) A Michelle P. waiver provider shall:

16 (a) ~~[Provide services to Michelle P. waiver recipients:~~

17 ~~1. Directly; or~~

18 ~~2. Indirectly through a subcontractor;~~

19 ~~(b)] Comply with[the following administrative regulations and program requirements]:~~

20 1. 907 KAR 1:671;

21 2. 907 KAR 1:672;~~[and]~~

22 3. 907 KAR 1:673;

23 4. This administrative regulation;

1     5. The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and  
2     45 C.F.R. Parts 160, 162, and 164; **[and]**

3     6. 42 U.S.C. 1320d to 1320d-8; **and**

4     **7. The provider participation requirements for SCL providers established in 907**  
5     **KAR 12:010, Section 3:**

6     (b)(~~e~~) Not enroll a participant ~~[Michelle P. waiver recipient]~~ for whom the provider  
7     is unequipped or unable to provide Michelle P. waiver services; and

8     (c)(~~d~~) Be permitted to accept or not accept a participant ~~[Michelle P. waiver~~  
9     recipient].

10    (3) In order to provide a Michelle P. waiver service in accordance with Section 4 of  
11    this administrative regulation, a Michelle P. waiver service provider:

12    (a) Shall, for a potential employee or volunteer, obtain the results of a Caregiver  
13    Misconduct Registry check as described in 922 KAR 5:120 or an equivalent out-of-state  
14    agency if the individual resided or worked outside of Kentucky during the year prior to  
15    employment or volunteerism; and

16    (b) May use Kentucky's national background check program established by 906 KAR  
17    1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

18    Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

19    (a) A clinical record in the MWMA **[portal]** for each participant~~[Michelle P. waiver~~  
20    recipient] that shall contain the following:

21    1. Pertinent medical, nursing, and social history;

22    2. A comprehensive assessment entered on form MAP 351, Medicaid Waiver  
23    Assessment and signed by the:

- a. Assessment team; and
- b. Department;
3. A person-centered service plan completed in accordance with Section 8 of this administrative regulation~~[MAP-109]~~;
4. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the participant~~[recipient]~~ or his or her legal representative at the time of application or reapplication and each recertification thereafter;
5. The name of the case manager;
6. Documentation of all level of care determinations;
7. All documentation related to prior authorizations, including requests, approvals, and denials;
8. Documentation of each contact with, or on behalf of, a participant~~[Michelle P. waiver recipient]~~;
9. Documentation that the participant~~[Michelle P. waiver recipient]~~ receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;
10. Documentation that the participant~~[recipient]~~ or legal representative was informed of the procedure for reporting complaints; and
11. Documentation of each service provided. The documentation shall include:
  - a. The date the service was provided;
  - b. The duration of the service;
  - c. The arrival and departure time of the provider, excluding travel time, if the service

1 was provided at the participant's~~[Michelle P. waiver recipient's]~~ home;

2 d. Itemization of each service delivered;

3 e. The participant's~~[Michelle P. waiver recipient's]~~ arrival and departure time,  
4 excluding travel time, if the service was provided outside the participant's~~[recipient's]~~  
5 home;

6 f. Progress notes which shall include documentation of changes, responses, and  
7 treatments utilized to meet the participant's~~[Michelle P. waiver recipient's]~~ needs; and

8 g. The signature of the service provider; and

9 (b) Fiscal reports, service records, and incident reports regarding services provided.

10 The reports and records shall be retained for the longer of:

11 1. At least six (6) years from the date that a covered service is provided; or

12 2. For a minor, three (3) years after the participant~~[recipient]~~ reaches the age of  
13 majority under state law.

14 (2) Upon request, a Michelle P. waiver provider shall make information regarding  
15 service and financial records available to the:

16 (a) Department;

17 (b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or  
18 its designee;

19 (c) United States Department for Health and Human Services or its designee;

20 (d) United States Government Accountability Office or its designee;

21 (e) Kentucky Office of the Auditor of Public Accounts or its designee; or

22 (f) Kentucky Office of the Attorney General or its designee.

23 Section 4. Participant~~[Michelle P. Waiver Recipient]~~ Eligibility Determinations and

Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible participant~~[Michelle P. waiver recipient]~~ who:

(a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and

(b) Would, without waiver services, be admitted to an ICF-IID or a nursing facility.

(2) To apply for participation in the program, an individual or individual's representative shall:

(a) Apply for 1915(c) home and community based waiver services via the MWMA [portal]; and

(b) Complete and upload into the MWMA [portal] a MAP – 115 Application Intake – Participant Authorization.

(3) The department shall perform a Michelle P. waiver service level of care determination for each participant~~[Michelle P. waiver recipient]~~ at least once every twelve (12) months or more often if necessary.

~~(4)~~(3) A Michelle P. waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. An environmental and minor home adaptation;

2. Case management; or

3. An environmental and minor home adaptation and case management;

(b) Is an inpatient of:

1. A hospital;

2. A nursing facility; or

3. An ICF-IID;

1 (c) Is a resident of a licensed personal care home; or

2 (d) Is receiving services from another 1915(c)~~[Medicaid]~~ home and community based  
3 ~~[services]~~ waiver services program.

4 ~~(5)~~~~[(4)]~~ A Michelle P. waiver provider shall inform a participant~~[Michelle P. waiver~~  
5 ~~recipient]~~ or the participant's~~[his]~~ legal representative of the choice to receive:

6 (a) Michelle P. waiver services; or

7 (b) Institutional services.

8 ~~(6)~~~~[(5)]~~ An eligible participant~~[Michelle P. waiver recipient]~~ or the  
9 participant's~~[recipient's]~~ legal representative shall select a participating Michelle P.  
10 waiver provider from which the participant~~[recipient]~~ wishes to receive Michelle P.  
11 waiver services.

12 ~~(7)~~~~[(6)]~~ A Michelle P. waiver provider shall ~~[use a MAP-24 to]~~ notify the department in  
13 writing electronically or in print of a participant's~~[Michelle P. waiver recipient's]~~:

14 (a) Termination from the Michelle P. waiver program; ~~[or]~~

15 (b)~~[(4-)]~~ Admission to an ICF-IID or nursing facility for less than sixty (60) consecutive  
16 days;~~[or]~~

17 ~~(c)~~~~[(2-)]~~ Return to the Michelle P. waiver program from an ICF-IID or nursing facility  
18 within sixty (60) consecutive days;

19 ~~(d)~~~~[(e)]~~ Admission to a hospital; or

20 ~~(e)~~~~[(d)]~~ Transfer to another waiver program within the department.

21 ~~(8)~~~~[(7)]~~ Involuntary termination of a service to a participant~~[Michelle P. waiver~~  
22 ~~recipient]~~ by a Michelle P. waiver provider shall require:

23 (a) Simultaneous notice in writing electronically or in print to the participant~~[recipient]~~



or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;
2. The basis for the intended action;
3. The authority by which the action is taken; and
4. The participant's~~[recipient's]~~ right to appeal the intended action through the provider's appeal or grievance process; and  
(b)~~[Submittal of a MAP-24 to the department at the time of the intended action; and~~  
(c)] The case manager or support broker in conjunction with the provider to:
  1. Provide the participant~~[recipient]~~ with the name, address, and telephone number of each current provider in the state;
  2. Provide assistance to the participant~~[recipient]~~ in making contact with another provider;
  3. Arrange transportation for a requested visit to a provider site;
  4. Provide a copy of pertinent information to the participant~~[recipient]~~ or legal representative;
  5. Ensure the health, safety, and welfare of the participant~~[recipient]~~ until an appropriate placement is secured;
  6. Continue to provide supports until alternative services are secured; and
  7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria. (1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:

- (a) Requires physical or environmental management or rehabilitation and:
1. Has a developmental disability or significantly sub-average intellectual functioning;
  2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:
    - a. Learning fundamental living skills;
    - b. Obtaining educational experiences which will be useful in self-supporting activities;
- or
- c. Increasing awareness of his or her environment; or
  3. Has a primary psychiatric diagnosis if:
    - a. The individual possesses care needs listed in subparagraph 1 or 2 of this paragraph;
    - b. The individual's mental care needs are adequately handled in an ICF-IID; and
    - c. The individual does not require psychiatric inpatient treatment; or
- (b) Has a developmental disability and meets the:
1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or
  2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).
- (2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria.
- (3) The department shall not determine that an individual fails to meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an

1 institution, or history of previous institutionalization if the individual meets the criteria  
2 established in subsection (1) of this section.

3 Section 6. Covered Services. (1) A Michelle P. waiver service shall:

4 (a) Be prior authorized by the department to ensure that the service or modification  
5 of the service meets the needs of the participant~~[Michelle P. waiver recipient]~~;

6 (b) Be provided pursuant to a person-centered service plan~~[of care]~~ or, for a  
7 PDS~~[CDO service]~~, pursuant to a person-centered service plan~~[of care]~~ and support  
8 spending plan;

9 (c) Except for a PDS~~[CDO service]~~, not be provided by a member of the  
10 participant's~~[Michelle P. waiver recipient's]~~ family. A PDS~~[CDO service]~~ may be  
11 provided by a participant's~~[Michelle P. waiver recipient's]~~ family member; and

12 (d) Be accessed within sixty (60) days of the date of prior authorization.

13 (2) To request prior authorization, a provider shall submit to the department a:

14 (a) Completed MAP 10, Waiver Services Physician's Recommendation that has  
15 been signed and dated by:

16 1. A physician;

17 2. An advanced practice registered nurse;

18 3. A physician assistant; or

19 4. An intellectual disability professional; and

20 (b) Person-centered service plan~~[MAP 109,]~~ and MAP 351, Medicaid Waiver  
21 Assessment~~[to the department]~~.

22 (3) Covered Michelle P. waiver services shall include:

23 (a) A comprehensive assessment, which shall:

1. Be completed by the department;
  2. Identify a participant's~~[Michelle P. waiver recipient's]~~ needs and the services the participant~~[Michelle P. waiver recipient]~~ or the participant's~~[recipient's]~~ family cannot manage or arrange for on the participant's~~[recipient's]~~ behalf;
  3. Evaluate a participant's~~[Michelle P. waiver recipient's]~~ physical health, mental health, social supports, and environment;
  4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, APRN, or another qualified professional in the area of intellectual disabilities;
  5. Be conducted by an assessment team; and
  6. Include at least one (1) face-to-face home visit by a member of the assessment team with the participant~~[Michelle P. waiver recipient]~~ and, if appropriate, the participant's~~[recipient's]~~ family;
- (b) A reassessment service, which shall:
1. Be completed by the department;
  2. Determine the continuing need for Michelle P. waiver services and, if appropriate, PDS~~[CDO services]~~;
  3. Be performed at least every twelve (12) months;
  4. Be conducted using the same procedures used in an assessment service; and
  5. Not be retroactive;
- (c) [A] Case management~~[service]~~ which shall meet the requirements established in Section 9 of this administrative regulation, and which shall:
1. Consist of coordinating the delivery of direct and indirect services to a

1 participant~~[Michelle P. waiver recipient];~~

2 2. Be provided by a case manager who shall:

3 a. Arrange for a service but not provide a service directly;

4 b. Contact the participant~~[Michelle P. waiver recipient]~~ monthly through a face-to-face  
5 visit at the participant's~~[Michelle P. waiver recipient's]~~ home, in the ADHC center, or the  
6 adult day training provider's location; and

7 c. Assure that service delivery is in accordance with a participant's person-centered  
8 service~~[Michelle P. waiver recipient's] plan[of care; and d. Meet the requirements of~~  
9 subsection (4) of this section];

10 3. Not include a group conference;

11 4.~~[Include development of a plan of care that shall:~~

12 a. ~~Be completed on the MAP 109 using Person Centered Planning: Guiding~~  
13 ~~Principles;~~

14 b. ~~Reflect the needs of the Michelle P. waiver recipient;~~

15 c. ~~List goals, interventions, and outcomes;~~

16 d. ~~Specify services needed;~~

17 e. ~~Determine the amount, frequency, and duration of services;~~

18 f. ~~Provide for reassessment at least every twelve (12) months;~~

19 g. ~~Be developed and signed by the case manager and Michelle P. waiver recipient,~~  
20 ~~family member, or legal representative; and~~

21 h. ~~Be submitted to the department no later than thirty (30) calendar days after~~  
22 ~~receiving the department's approval of the Michelle P. waiver service level of care;~~

23 5.] Include documentation with a detailed monthly summary note in the MWMA.

1 which includes:

- 2 a. The month, day, and year for the time period each note covers;
- 3 b. Progression, regression, and maintenance toward outcomes identified in the plan
- 4 of care;
- 5 c. The signature, date of signature, and title of the individual preparing the note; and
- 6 d. Documentation of at least one (1) face-to-face meeting between the case
- 7 manager and participant~~[Michelle P. waiver recipient]~~, family member, or legal
- 8 representative;

9 5.[6.] Include requiring a participant~~[Michelle P. waiver recipient]~~ or legal

10 representative to sign a MAP-350, Long Term Care Facilities and Home and

11 Community Based Program Certification Form at the time of application or reapplication

12 and at each recertification to document that the individual was informed of the choice to

13 receive Michelle P. waiver services or institutional services; and

14 6.[7.] Not be provided to a participant~~[recipient]~~ by an agency if the agency provides

15 any other Michelle P. waiver service to the participant~~[recipient]~~;

16 (d) A homemaker service, which shall consist of general household activities and

17 shall:

- 18 1. Be provided by direct care staff;
- 19 2. Be provided to a participant~~[Michelle P. waiver recipient]~~:
- 20 a. Who is functionally unable, but would normally perform age-appropriate
- 21 homemaker tasks; and
- 22 b. If the caregiver regularly responsible for homemaker activities is temporarily
- 23 absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note **in the MWMA**, which shall include:
- a. The month, day, and year for the time period each note covers; and
  - b. ~~[Progression, regression, and maintenance toward outcomes identified in the plan of care; and~~
  - c.] The signature, date of signature, and title of the individual preparing the note;
  - (e) A personal care service which shall:
    1. Be age appropriate;
    2. Consist of assisting a participant~~[recipient]~~ with eating, bathing, dressing, personal hygiene, or other activities of daily living;
    3. Be provided by direct care staff;
    4. Be provided to a participant~~[Michelle P. waiver recipient]~~:
      - a. Who does not need highly skilled or technical care;
      - b. For whom services are essential to the participant's~~[recipient's]~~ health and welfare and not for the participant's~~[recipient's]~~ family; and
      - c. Who needs assistance with age-appropriate activities of daily living; and
5. Include documentation with a detailed note **in the MWMA**, which shall include:
- a. The month, day, and year for the time period each note covers;
  - b. ~~[Progression, regression, and maintenance toward outcomes identified in the plan of care;~~
  - c.] The signature, date of signature, and title of the individual preparing the note; and
  - c.~~d.]~~ The beginning and ending time of service;
  - (f) An attendant care service, which shall consist of hands-on care that is:
    1. Provided by direct care staff to a participant~~[Michelle P. waiver recipient]~~ who:

1 a. Is medically stable but functionally dependent and requires care or supervision  
2 twenty-four (24) hours per day; and

3 b. Has a family member or other primary caretaker who is employed or attending  
4 school and is not able to provide care during working hours;

5 2. Not of a general housekeeping nature;

6 3. Not provided to a participant~~[Michelle P. waiver recipient]~~ who is receiving any of  
7 the following Michelle P. waiver services:

8 a. Personal care;

9 b. Homemaker;

10 c. ADHC;

11 d. Adult day training;

12 e. Community living supports; or

13 f. Supported employment; and

14 4. Include documentation with a detailed note in the MWMA, which shall include:

15 a. The month, day, and year for the time period each note covers;

16 b.~~[Progression, regression, and maintenance toward outcomes identified in the plan~~  
17 ~~of care;~~

18 ~~c.]~~ The signature, date of signature, and title of the individual preparing the note; and

19 c.~~[d.]~~ Beginning and ending time of service;

20 (g) A respite care service, which shall be short term care based on the absence or  
21 need for relief of the primary caretaker and~~[be]~~:

22 1. Be provided by direct care staff who provide services at a level which appropriately  
23 and safely meets the medical needs of the participant~~[Michelle P. waiver recipient];~~



- 1       2. Be provided to a participant~~[Michelle P. waiver recipient]~~ who has care needs
- 2 beyond normal babysitting;
- 3       3. Be used no less than every six (6) months; and
- 4       4. ~~[Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if~~
- 5 ~~provided to a child under age twenty-one (21) in an ADHC center; and~~5.] Include
- 6 documentation with a detailed note in the MWMA, which shall include:
  - 7       a. The month, day, and year for the time period each note covers;
  - 8       b. The signature, date of signature, and title of the individual preparing the note; and
  - 9       c. The beginning and ending time of service;
  - 10       (h) An environmental and minor home adaptation service, which shall be a physical
  - 11 adaptation to a home that is necessary to ensure the health, welfare, and safety of a
  - 12 participant~~[Michelle P. waiver recipient]~~ and which shall:
    - 13       1. Meet all applicable safety and local building codes;
    - 14       2. Relate strictly to the participant's~~[Michelle P. waiver recipient's]~~ disability and
    - 15 needs;
    - 16       3. Exclude an adaptation or improvement to a home that has no direct medical or
    - 17 remedial benefit to the participant~~[Michelle P. waiver recipient]~~;
    - 18       4. Be submitted on a form MAP 95 Request for Equipment Form that is uploaded
    - 19 into the MWMA [portal] for prior authorization; and
    - 20       5. Include documentation with a detailed note in the MWMA, which shall include:
      - 21       a. The month, day, and year for the time period each note covers; and
      - 22       b. The signature, date of signature, and title of the individual preparing the note;
      - 23       (i) Occupational therapy, which shall be:

- 1        1. A physician ordered evaluation of a participant's~~[Michelle P. waiver recipient's]~~  
2 level of functioning by applying diagnostic and prognostic tests;
- 3        2. Physician-ordered services in a specified amount and duration to guide a  
4 participant~~[Michelle P. waiver recipient]~~ in the use of therapeutic, creative, and self-care  
5 activities to assist the participant~~[recipient]~~ in obtaining the highest possible level of  
6 functioning;
- 7        3. Training of other Michelle P. waiver providers on improving the level of functioning;
- 8        4. Exclusive of maintenance or the prevention of regression;
- 9        5. Provided by an occupational therapist or an occupational therapy assistant  
10 supervised by an occupational therapist in accordance with 201 KAR 28:130; and
- 11        6. Documented with a detailed staff note in the MWMA, which shall include:  
12        a. The month, day, and year for the time period each note covers;  
13        b. Progression, regression, and maintenance toward outcomes identified in the  
14 person-centered service plan~~[of care]~~; and  
15        c. The signature, date of signature, and title of the individual preparing the note;
- 16        (j) Physical therapy, which shall:  
17        1. Be a physician-ordered evaluation of a participant~~[Michelle P. waiver recipient]~~ by  
18 applying muscle, joint, and functional ability tests;  
19        2. Be physician-ordered treatment in a specified amount and duration to assist a  
20 participant~~[Michelle P. waiver recipient]~~ in obtaining the highest possible level of  
21 functioning;
- 22        3. Include training of other Michelle P. waiver providers on improving the level of  
23 functioning;

1 4. Be exclusive of maintenance or the prevention of regression;

2 5. Be provided by a physical therapist or a physical therapist assistant supervised by  
3 a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and

4 6. Be documented with a detailed monthly summary note in the MWMA, which shall  
5 include:

6 a. The month, day, and year for the time period each note covers;

7 b. Progression or lack of progression toward outcomes identified in the person-  
8 centered service plan~~[of care]~~; and

9 c. The signature, date of signature, and title of the individual preparing the note;

10 (k) Speech language pathology services,~~[therapy]~~ which shall:

11 1. Be a physician-ordered evaluation of a participant~~[Michelle P. waiver recipient]~~  
12 with a speech or language disorder;

13 2. Be a physician-ordered habilitative service in a specified amount and duration to  
14 assist a participant~~[Michelle P. waiver recipient]~~ with a speech and language disability in  
15 obtaining the highest possible level of functioning;

16 3. Include training of other Michelle P. waiver providers on improving the level of  
17 functioning;

18 4. Be provided by a speech-language pathologist; and

19 5. Be documented with a detailed monthly summary note in the MWMA, which shall  
20 include:

21 a. The month, day, and year for the time period each note covers;

22 b. Progression, regression, and maintenance toward outcomes identified in the  
23 person-centered service plan~~[of care]~~; and

- c. The signature, date of signature, and title of the individual preparing the note;
- (l) An adult day training service, which shall:
  1. Support the participant~~[Michelle P. waiver recipient]~~ in daily, meaningful routines in the community;
  2. Stress training in:
    - a. The activities of daily living;
    - b. Self-advocacy;
    - c. Adaptive and social skills; and
    - d. Vocational skills;
  3. Be provided in a community setting which may:
    - a. Be a fixed location; or
    - b. Occur in public venues;
  4. Not be diversional in nature;
  5. If provided on site:
    - a. Include facility-based services provided on a regularly-scheduled basis;
    - b. Lead to the acquisition of skills and abilities to prepare the participant~~[recipient]~~ for work or community participation; or
    - c. Prepare the participant~~[recipient]~~ for transition from school to work or adult support services;
  6. If provided off site:
    - a. Include services provided in a variety of community settings;
    - b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Be designed to result in increased ability to access community resources without paid supports;

d. Provide the opportunity for the participant ~~[recipient]~~ to be involved with other members of the general population; and

e. Be provided as:

(i) An enclave or group approach to training in which participants ~~[recipients]~~ work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;

(ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or

(iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the participant ~~[recipient]~~ or participants ~~[recipients]~~;

7. Ensure that any participant ~~[recipient]~~ performing productive work that benefits the organization is paid commensurate with compensation to members of the general work force doing similar work;

8. Require that an adult day training service provider conduct, at least annually, an orientation informing the participant ~~[recipient]~~ of supported employment and other competitive opportunities in the community;

9. Be provided at a time mutually agreed to by the participant ~~[recipient]~~ and Michelle P. waiver provider;

10.a. Be provided to participants of ~~[recipients]~~ age twenty-two (22) years or older; or

b. Be provided to participants of ~~[recipients]~~ age sixteen (16) to twenty-one (21) years

as a transition process from school to work or adult support services; and

11. Be documented **in the MWMA** with:

a. A detailed monthly summary note<sub>1</sub> which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan~~[of care]~~; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record<sub>1</sub> which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(m) A supported employment service<sub>1</sub> which shall:

1. Be intensive, ongoing support for a participant~~[Michelle P. waiver recipient]~~ to maintain paid employment in an environment in which an individual without a disability is employed;

2. Include attending to a participant's~~[recipient's]~~ personal care needs;

3. Be provided in a variety of settings;

4. Be provided on a one-to-one basis;

5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's~~[Michelle P. waiver recipient's]~~ file;

6. Exclude work performed directly for the supported employment provider;

7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

8. Be documented in the MWMA by:

a. A detailed monthly summary note, which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan~~[of care]~~; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record, which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(n) A behavioral support service which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the participant~~[Michelle P. waiver recipient]~~ to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the participant's~~[Michelle P. waiver recipient's]~~ behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

- c. Critical variables that preceded the behavior;
  - d. Effects of different situations on the behavior; and
  - e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;
4. Include the development of a behavioral support plan which shall:
    - a. Be developed by the behavior support specialist;
    - b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;
    - c. Be revised as necessary;
    - d. Define the techniques and procedures used;
    - e. Be designed to equip the participant~~[recipient]~~ to communicate his or her needs and to participate in age-appropriate activities;
    - f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
    - g. Reflect the use of positive approaches; and
    - h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
  5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;
  6. Include the monitoring of a participant's~~[Michelle P. waiver recipient's]~~ progress which shall be accomplished by:
    - a. The analysis of data concerning the frequency, intensity, and duration of a



behavior; and

b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented **in the MWMA** by a detailed staff note, which shall include:

a. The date of service;

b. The beginning and ending time; and

c. The signature, date of signature, and title of the behavior support specialist;

(o) An ADHC service, which shall:

1. Be provided to a participant~~[Michelle P. waiver recipient]~~ who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to participants~~[Michelle P. waiver recipients]~~ during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN;

e. Age and diagnosis appropriate daily activities; and

- 1 f. Routine services that meet the daily personal and health care needs of a  
2 participant~~[Michelle P. waiver recipient]~~, including:
- 3 (i) Monitoring of vital signs;
  - 4 (ii) Assistance with activities of daily living; and
  - 5 (iii) Monitoring and supervision of self-administered medications, therapeutic  
6 programs, and incidental supplies and equipment needed for use by a  
7 participant~~[Michelle P. waiver recipient]~~;
- 8 3. Include developing, implementing, and maintaining nursing policies for nursing or  
9 medical procedures performed in the ADHC center;
- 10 4. Include respite care services pursuant to paragraph (g) of this subsection;
- 11 5. Be provided to a participant~~[Michelle P. waiver recipient]~~ by the health team in an  
12 ADHC center, which may include:
- 13 a. A physician;
  - 14 b. A physician assistant;
  - 15 c. An APRN;
  - 16 d. An RN;
  - 17 e. An LPN;
  - 18 f. An activities director;
  - 19 g. A physical therapist;
  - 20 h. A physical therapist assistant;
  - 21 i. An occupational therapist;
  - 22 j. An occupational therapy assistant;
  - 23 k. A speech-language pathologist;

1 l. A social worker;

2 m. A nutritionist;

3 n. A health aide;

4 o. An LPCC;

5 p. An LMFT;

6 q. A certified psychologist with autonomous functioning; or

7 r. A licensed psychological practitioner; and

8 6. Be provided pursuant to a plan of treatment that~~[-The plan of treatment]~~ shall:

9 a. Be developed and signed by each member of the plan of treatment team which  
10 shall include the participant~~[recipient]~~ or a legal representative of the

11 participant~~[recipient]~~;

12 b. Include pertinent diagnoses, mental status, services required, frequency of visits  
13 to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities  
14 permitted, nutritional requirements, medication, treatment, safety measures to protect  
15 against injury, instructions for timely discharge, and other pertinent information; and

16 c. Be developed annually from information on the MAP 351, Medicaid Waiver  
17 Assessment and revised as needed; and

18 (p) Community living supports, which shall:

19 1. Be provided to facilitate independence and promote integration into the community  
20 for a participant~~[an SCL recipient]~~ residing in his or her own home or in his or her  
21 family's home;

22 2. Be supports and assistance that~~[which]~~ shall be related to chosen outcomes, ~~[and]~~  
23 not be diversional in nature, and~~[-This]~~ may include:

- a. Routine household tasks and maintenance;
  - b. Activities of daily living;
  - c. Personal hygiene;
  - d. Shopping;
  - e. Money management;
  - f. Medication management;
  - g. Socialization;
  - h. Relationship building;
  - i. Leisure choices;
  - j. Participation in community activities;
  - k. Therapeutic goals; or
  - l. Nonmedical care not requiring nurse or physician intervention;
3. Not replace other work or day activities;
  4. Be provided on a one-on-one basis;
  5. Not be provided at an adult day-training or children's day habilitation site;
  6. Be documented **in the MWMA** by:
    - a. A time and attendance record<sub>1</sub> which shall include:
      - (i) The date of the service;
      - (ii) The beginning and ending time of the service; and
      - (iii) The signature, date of signature, and title of the individual providing the service;
- and
- b. A detailed monthly summary note<sub>1</sub> which shall include:
    - (i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan~~[of care]~~; and

(iii) The signature, date of signature, and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training and supported employment.

~~[(4) A case manager shall:~~

~~(a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:~~

~~1. A qualified professional in the area of intellectual disabilities;~~

~~2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a development disability;~~

~~3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;~~

~~4. A qualified social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;~~

~~5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;~~

~~6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;~~

~~7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with individuals with an intellectual or a developmental~~

1 ~~disability; or~~

2 ~~8. A licensed psychological practitioner who has at least two (2) years of experience~~  
3 ~~working with individuals with an intellectual or a developmental disability;~~

4 ~~(b) Be an RN;~~

5 ~~(c) Be an LPN;~~

6 ~~(d) Be a qualified social worker;~~

7 ~~(e) Be an LMFT;~~

8 ~~(f) Be an LPCC;~~

9 ~~(g) Be a licensed psychologist; or~~

10 ~~(h) Be a licensed psychological practitioner.]~~

11 Section 7. Participant[Consumer]-Directed Services[Option]. (1) Covered services  
12 and supports provided to a participant receiving PDS [~~Michelle P. waiver recipient~~  
13 ~~participating in CDO~~] shall be nonmedical and include:

14 (a) A home and community support service which shall:

15 1. Be available only as participant-directed services [~~under the consumer-directed~~  
16 ~~option~~];

17 2. Be provided in the participant's[consumer's] home or in the community;

18 3. Be based upon therapeutic goals and not be diversional in nature;

19 4. Not be provided to an individual if the same or similar service is being provided to  
20 the individual via non-PDS[CDO] Michelle P. waiver services; and

21 5. Include:

22 a. Assistance, support, or training in activities including meal preparation, laundry, or  
23 routine household care or maintenance;

1 b. Activities of daily living including bathing, eating, dressing, personal hygiene,  
2 shopping, or the use of money;

3 c. Reminding, observing, or monitoring of medications;

4 d. Nonmedical care which does not require a nurse or physician intervention;

5 e. Respite; or

6 f. Socialization, relationship building, leisure choice, or participation in generic  
7 community activities;

8 (b) Goods and services which shall:

9 1. Be individualized;

10 2. Be utilized to reduce the need for personal care or to enhance independence  
11 within the home or community of the participant~~[recipient]~~;

12 3. Not include experimental goods or services; and

13 4. Not include chemical or physical restraints;

14 (c) A community day support service which shall:

15 1. Be available only as participant-directed services~~[under the consumer-directed~~  
16 ~~option]~~;

17 2. Be provided in a community setting;

18 3. Be tailored to the participant's~~[consumer's]~~ specific personal outcomes related to  
19 the acquisition, improvement, and retention of skills and abilities to prepare and support  
20 the participant~~[consumer]~~ for work or community activities, socialization, leisure, or  
21 retirement activities;

22 4. Be based upon therapeutic goals and not be diversional in nature; and

23 5. Not be provided to an individual if the same or similar service is being provided to

1 the individual via non-PDS [CDO] Michelle P. waiver services; or

2 (d) Financial management which shall:

3 1. Include managing, directing, or dispersing a participant's~~consumer's~~ funds  
4 identified in the participant's~~consumer's~~ approved PDS[CDO] budget;

5 2. Include payroll processing associated with the individuals hired by a  
6 participant~~consumer~~ or participant's~~consumer's~~ representative;

7 3. Include withholding local, state, and federal taxes and making payments to  
8 appropriate tax authorities on behalf of a participant~~consumer~~;

9 4. Be performed by an entity:

10 a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

11 b. With at least two (2) years of experience working with individuals possessing the  
12 same or similar level of care needs as those referenced in Section 5 of this  
13 administrative regulation;

14 5. Include preparing fiscal accounting and expenditure reports for:

15 a. A participant~~consumer~~ or participant's~~consumer's~~ representative; and

16 b. The department.

17 (2) To be covered, a PDS~~CDO-service~~ shall be specified in a person-centered  
18 service plan~~of care~~.

19 (3) Reimbursement for a PDS~~CDO-service~~ shall not exceed the department's  
20 allowed reimbursement for the same or similar service provided in a non-PDS[CDO]  
21 Michelle P. waiver setting[,], except that respite may be provided in excess of the cap  
22 established in Section 14[42](2) of this administrative regulation if:

23 (a) Necessary per the participant's person-centered service~~consumer's~~ plan~~of~~



care]; and

(b) Approved by the department in accordance with subsection (13) of this section.

(4) A participant~~[consumer]~~, including a married participant~~[consumer]~~, shall choose providers and a participant's~~[consumer's]~~ choice shall be reflected or documented in the person-centered service plan~~[of care]~~.

(5)(a) A participant~~[consumer]~~ may designate a representative to act on the participant's~~[consumer's]~~ behalf.

(b) The PDS~~[CDO]~~ representative shall:

1. ~~[(a)]~~ Be twenty-one (21) years of age or older;

2. ~~[(b)]~~ Not be monetarily compensated for acting as the PDS~~[CDO]~~ representative or providing a PDS~~[CDO service]~~; and

3. ~~[(c)]~~ Be appointed by the participant ~~[consumer]~~ on a MAP-2000, Initiation/Termination of Participant-Directed Services~~[form]~~.

(6) A participant ~~[consumer]~~ may voluntarily terminate PDS~~[CDO services]~~ by completing a MAP-2000, Initiation/Termination of Participant-Directed Services and submitting it to the support broker.

(7) The department shall immediately terminate a participant~~[consumer]~~ from PDS~~[CDO services]~~ if:

(a) Imminent danger to the participant's~~[consumer's]~~ health, safety, or welfare exists;

(b) The participant~~[consumer]~~ fails to pay patient liability;

(c) The participant's person-centered service ~~[recipient's]~~ plan ~~[of care]~~ indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the participant's~~[recipient's]~~ safety and welfare due to being left alone without a

1 caregiver present; or

2 (d) The participant~~[recipient]~~, caregiver, family, or guardian threatens or intimidates a  
3 support broker or other PDS~~[CDO]~~ staff.

4 (8) The department may terminate a participant~~[consumer]~~ from PDS~~[CDO services]~~  
5 if it determines that the participant's PDS ~~[consumer's CDO]~~ provider has not adhered  
6 to the person-centered service plan~~[of care]~~.

7 (9) Except for a termination required by subsection (7) of this section, prior to a  
8 participant's~~[consumer's]~~ termination from PDS~~[CDO services]~~, the support broker shall:

9 (a) Notify the assessment or reassessment service provider of potential termination;

10 (b) Assist the participant~~[consumer]~~ in developing a resolution and prevention plan;

11 (c) Allow at least thirty (30) but no more than ninety (90) days for the  
12 participant~~[consumer]~~-to resolve the issue, develop and implement a prevention plan, or  
13 designate a PDS~~[CDO]~~ representative;

14 (d) Complete, and submit to the department, a MAP-2000, Initiation/Termination of  
15 Participant-Directed Services terminating the participant~~[consumer]~~ from PDS~~[CDO~~  
16 ~~services]~~ if the participant~~[consumer]~~ fails to meet the requirements in paragraph (c) of  
17 this subsection; and

18 (e) Assist the participant~~[consumer]~~ in transitioning back to traditional Michelle P.  
19 waiver services.

20 (10) Upon an involuntary termination of PDS~~[CDO services]~~, the department shall:

21 (a) Notify a participant~~[consumer]~~ in writing of its decision to terminate the  
22 participant's PDS~~[consumer's CDO]~~ participation; and

23 (b) Inform the participant~~[consumer]~~ of the right to appeal the department's decision

1 in accordance with Section ~~19[16]~~[14] of this administrative regulation.

2 (11) A ~~PDS~~[CDO] provider shall:

3 (a) Be selected by the ~~participant~~[consumer];

4 (b) Submit a completed Kentucky ~~Participant~~[Consumer] Directed ~~Service~~[Option]  
5 Employee/Provider Contract to the support broker;

6 (c) Be eighteen (18) years of age or older;

7 (d) Be a citizen of the United States with a valid Social Security number or possess a  
8 valid work permit if not a U.S. citizen;

9 (e) Be able to communicate effectively with the ~~participant~~[consumer],  
10 ~~participant's~~[consumer] representative, or family;

11 (f) Be able to understand and carry out instructions;

12 (g) Be able to keep records as required by the ~~participant~~[consumer];

13 (h) Submit to a criminal background check from the Kentucky Administrative  
14 Office of the Courts and equivalent out-of-state agency if the individual resided or  
15 worked outside of Kentucky during the twelve (12) months prior to being a PDS  
16 provider;

17 (i) Submit to a check of the:

18 1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not  
19 be found on the registry; **[and]**

20 2. Caregiver Misconduct Registry **maintained** in accordance with 922 KAR 5:120  
21 and not be found on the registry; **and**

22 **3. Central Registry maintained in accordance with 922 KAR 1:470 and not be**  
23 **found on the registry;**

1 (j) Not have pled guilty or been convicted of committing a sex crime or violent crime;

2 (k) Complete training on the reporting of abuse, neglect, or exploitation in  
3 accordance with KRS 209.030 or 620.030 and on the needs of the  
4 participant~~[consumer]~~;

5 (l) Be approved by the department;

6 (m) Maintain and submit timesheets documenting hours worked; and

7 (n) Be a friend, spouse, parent, family member, other relative, employee of a  
8 provider agency, or other person hired by the participant~~[consumer]~~.

9 (12) A parent, parents combined, or a spouse shall not provide more than forty (40)  
10 hours of services in a calendar week (Sunday through Saturday) regardless of the  
11 number of children who receive waiver services.

12 (13)(a) The department shall establish a twelve (12) month budget for a  
13 participant~~[consumer]~~ based on the participant's person-centered service~~[consumer's]~~  
14 plan~~[of care]~~.

15 (b) A participant's~~[consumer's]~~ twelve (12) month budget shall not exceed \$40,000  
16 unless:

17 1. The participant's~~[consumer's]~~ support broker requests a budget adjustment to a  
18 level higher than \$40,000; and

19 2. The department approves the adjustment.

20 (c) The department shall consider the following factors in determining whether to  
21 grant a twelve (12) month budget adjustment:

22 1. If the proposed services are necessary to prevent imminent institutionalization;

23 2. The cost effectiveness of the proposed services;

1 3. Protection of the participant's~~[consumer's]~~ health, safety, and welfare; and

2 4. If a significant change has occurred in the participant's~~[recipient's]~~:

3 a. Physical condition, resulting in additional loss of function or limitations to activities  
4 of daily living and instrumental activities of daily living;

5 b. Natural support system; or

6 c. Environmental living arrangement, resulting in the participant's~~[recipient's]~~  
7 relocation.

8 (d) A participant's~~[consumer's]~~ twelve (12) month budget may encompass a service  
9 or any combination of services listed in subsection (1) of this section, if each service is  
10 established in the participant's person-centered service~~[consumer's]~~ plan~~[of care]~~ and  
11 approved by the department.

12 (14) Unless approved by the department pursuant to subsection (13)(a) through (c)  
13 of this section, if a PDS~~[CDO service]~~ is expanded to a point in which expansion  
14 necessitates a twelve (12) month budget increase, the entire service shall only be  
15 covered via traditional (non-PDS~~[CDO]~~) waiver services.

16 (15) A support broker shall:

17 (a) Provide needed assistance to a participant~~[consumer]~~ with any aspect of  
18 PDS~~[CDO]~~ or blended services;

19 (b) Be available to a participant~~[consumer]~~ twenty-four (24) hours per day, seven (7)  
20 days per week;

21 (c) Comply with all applicable federal and state laws and requirements;

22 (d) Continually monitor a participant's~~[consumer's]~~ health, safety, and welfare; and

23 (e) Complete or revise a person-centered service plan in accordance with Section 8

1 of this administrative regulation~~[of care using the Person Centered Planning: Guiding~~  
2 ~~Principles]~~.

3 (16)(a) A support broker or case manager may conduct an assessment or  
4 reassessment for a PDS~~[CDO]~~ participant.

5 (b) A PDS ~~[CDO]~~ assessment or reassessment performed by a support broker shall  
6 comply with the assessment or reassessment provisions established in this  
7 administrative regulation.

8 **(17) Services provided by a support broker shall meet the conflict free**  
9 **requirements established for case management in Section 9(4)(f) and Section 9(5)**  
10 **of this administrative regulation.**

11 Section 8. Person-centered Service Plan Requirements. (1) A person-centered  
12 service plan shall be established:

13 (a) For each participant; and

14 (b) By the participant's person-centered team.

15 (2) A participant's person-centered service plan shall:

16 (a) Be developed by:

17 1. The participant, the participant's guardian, or the participant's representative;

18 2. The participant's case manager;

19 3. The participant's person-centered team; and

20 4. Any other individual chosen by the participant if the participant chooses any other  
21 individual to participate in developing the person-centered service plan;

22 (b) Use a process that:

23 1. Provides the necessary information and support to empower the participant, the

participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

b. Makes decisions; and

c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes;

9. Empowers the participant's person-centered team to create a person-centered service plan that:

a. Is based on the participant's:

(i) Assessed clinical and support needs;

1 (ii) Strengths;

2 (iii) Preferences; and

3 (iv) Ideas;

4 b. Encourages and supports the participant's:

5 (i) Rehabilitative needs;

6 (ii) Habilitative needs; and

7 (iii) Long term satisfaction;

8 c. Is based on reasonable costs given the participant's support needs;

9 d. Includes:

10 (i) The participant's goals;

11 (ii) The participant's desired outcomes; and

12 (iii) Matters important to the participant;

13 e. Includes a range of supports including funded, community, and natural supports

14 that shall assist the participant in achieving identified goals;

15 f. Includes:

16 (i) Information necessary to support the participant during times of crisis; and

17 (ii) Risk factors and measures in place to prevent crises from occurring;

18 g. Assists the participant in making informed choices by facilitating knowledge of and

19 access to services and supports;

20 h. Records the alternative home and community-based settings that were considered

21 by the participant;

22 i. Reflects that the setting in which the participant resides was chosen by the

23 participant;



1 j. Is understandable to the participant and to the individuals who are important in  
2 supporting the participant;

3 k. Identifies the individual or entity responsible for monitoring the person-centered  
4 service plan;

5 l. Is finalized and agreed to with the informed consent of the participant or  
6 participant's legal representative in writing with signatures by each individual who will be  
7 involved in implementing the person-centered service plan;

8 m. Shall be distributed to the individual and other people involved in implementing  
9 the person-centered service plan;

10 n. Includes those services which the individual elects to self-direct; and

11 o. Prevents the provision of unnecessary or inappropriate services and supports; and

12 (c) Include in all settings the ability for the participant to:

13 1. Have access to make private phone calls, texts, or emails at the participant's  
14 preference or convenience;

15 2.a. Choose when and what to eat;

16 b. Have access to food at any time;

17 c. Choose with whom to eat or whether to eat alone; and

18 d. Choose appropriating clothing according to the:

19 (i) Participant's preference;

20 (ii) Weather; and

21 (iii) Activities to be performed.

22 (3) If a participant's person-centered service plan includes ADHC services, the  
23 ADHC services plan of treatment shall be addressed in the person-centered service

1 plan.

2 (4)(a) A participant's person-centered service plan shall be:

3 1. Entered into the MWMA [portal] by the participant's case manager; and

4 2. Updated in the MWMA [portal] by the participant's case manager.

5 (b) A participant or participant's authorized representative shall complete and upload  
6 into the MWMA [portal] a MAP - 116 Service Plan – Participant Authorization prior to or  
7 at the time the person-centered service plan is uploaded into the MWMA [portal].

8 Section 9. Case Management Requirements. (1) A case manager shall:

9 (a) Have a bachelor's degree from an accredited institution in a human services field  
10 and be supervised by:

11 1. A qualified professional in the area of intellectual disabilities who:

12 a. Has at least one (1) year of experience working directly with individuals with an  
13 intellectual disability or a developmental disability;

14 b. Meets the federal educational requirements for a qualified intellectual disability  
15 professional established in 42 C.F.R. 483.430; and

16 c. Provides documentation of education and experience;

17 2. A registered nurse who has at least two (2) years of experience working with  
18 individuals with an intellectual or a development disability;

19 3. An individual with a bachelor's degree in a human service field who has at least  
20 two (2) years of experience working with individuals with an intellectual or a  
21 developmental disability;

22 4. A licensed clinical social worker who has at least two (2) years of experience  
23 working with individuals with an intellectual or a developmental disability;

1     5. A licensed marriage and family therapist who has at least two (2) years of  
2 experience working with individuals with an intellectual or a developmental disability;

3     6. A licensed professional clinical counselor who has at least two (2) years of  
4 experience working with individuals with an intellectual or a developmental disability;

5     7. A certified psychologist or licensed psychological associate who has at least two  
6 (2) years of experience working with individuals with an intellectual or a developmental  
7 disability; or

8     8. A licensed psychological practitioner or certified psychologist with autonomous  
9 functioning who has at least two (2) years of experience working with individuals with an  
10 intellectual or a developmental disability;

11     (b) Be a registered nurse;

12     (c) Be a licensed practical nurse;

13     (d) Be a licensed clinical social worker;

14     (e) Be a licensed marriage and family therapist;

15     (f) Be a licensed professional clinical counselor;

16     (g) Be a licensed psychologist; or

17     (h) Be a licensed psychological practitioner.

18     (2) A case manager shall:

19     (a) Communicate in a way that ensures the best interest of the participant;

20     (b) Be able to identify and meet the needs of the participant;

21     (c)1. Be competent in the participant's language either through personal knowledge  
22 of the language or through interpretation; and

23     2. Demonstrate a heightened awareness of the unique way in which the participant

interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:

a. Need for knowledge of the case management process;

b. Personal rights; and

c. Risks and responsibilities as well as awareness of available services; and

2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

(e) Have a code of ethics to guide the case manager in providing case management which shall address:

1. Advocating for standards that promote outcomes of quality;

2. Ensuring that no harm is done;

3. Respecting the rights of others to make their own decisions;

4. Treating others fairly; and

5. Being faithful and following through on promises and commitments;

(f) 1. Lead the person-centered service planning team; and  
2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g) 1. Include the participant's participation or legal representative's participation in the case management process; and

2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

1 1. A participant's interactions and communications with other agencies involved in  
2 implementing the participant's person-centered service plan; and

3 2. Personal observations;

4 (i) Advocate for a participant with service providers to ensure that services are  
5 delivered as established in the participant's person-centered service plan;

6 (j) Be accountable to:

7 1. A participant to whom the case manager provides case management in ensuring  
8 that the participant's needs are met;

9 2. A participant's person-centered team and provide leadership to the team and  
10 follow through on commitments made; and

11 3. The case manager's employer by following the employer's policies and  
12 procedures;

13 (k) Stay current regarding the practice of case management and case management  
14 research;

15 (l) Assess the quality of services, safety of services, and cost effectiveness of  
16 services being provided to a participant in order to ensure that implementation of the  
17 participant's person-centered service plan is successful and done so in a way that is  
18 efficient regarding the participant's financial assets and benefits;

19 (m) Document services provided to a participant by entering the following into the  
20 MWMA [portal]:

21 1. A monthly department approved person-centered monitoring tool; and

22 2. A monthly entry, which shall include:

23 a. The month and year for the time period the note covers;

1 b. An analysis of progress toward the participant's outcome or outcomes;

2 c. Identification of barriers to achievement of outcomes;

3 d. A projected plan to achieve the next step in achievement of outcomes;

4 e. The signature and title of the case manager completing the note; and

5 f. The date the note was generated;

6 (n) Accurately reflect in the MWMA **[portal]** if a participant is:

7 1. Terminated from the Michelle P. waiver program;

8 2. Admitted to an intermediate care facility for individuals with an intellectual  
9 disability;

10 3. Admitted to a hospital;

11 4. Admitted to a skilled nursing facility;

12 5. Transferred to another Medicaid 1915(c) home and community based waiver  
13 service program; or

14 6. Relocated to a different address; and

15 (o) Provide information about participant-directed services to the participant or the  
16 participant's guardian;

17 1. At the time the initial person-centered service plan is developed;

18 2. At least annually thereafter; and

19 3. Upon inquiry from the participant or participant's guardian.

20 (3) If a participant:

21 (a) Voluntarily terminates participation in the Michelle P. waiver program in order to  
22 be admitted to a hospital, to a nursing facility, or to an intermediate care facility for  
23 individuals with an intellectual disability, the participant's case manager shall enter the

1 request into the MWMA [portal]; or

2 (b) Is transferred to another 1915(c) home and community based waiver services  
3 program, the case manager shall enter the transfer request into the MWMA [portal].

4 (4) Case management shall:

5 (a) Consist of coordinating the delivery of direct and indirect services to a participant;

6 (b) Be provided by a case manager who shall:

7 1. Arrange for a service but not provide a service directly;

8 2. Contact the participant monthly through a face-to-face visit at the participant's  
9 home, in the ADHC center, or at the adult day training provider's location;

10 3. Assure that service delivery is in accordance with a participant's person-centered  
11 service plan; and

12 4. Meet the requirements of this section;

13 (c) Not include a group conference;

14 (d) Include documenting:

15 1. The signature, date of signature, and title of the individual preparing the note; and

16 2. Documentation of at least one (1) face-to-face meeting between the case  
17 manager and participant, family member, or legal representative;

18 (e) Include requiring a participant or legal representative to sign a MAP-350, Long  
19 Term Care Facilities and Home and Community Based Program Certification Form at  
20 the time of application or reapplication and at each recertification to document that the  
21 individual was informed of the choice to receive Michelle P. waiver or institutional  
22 services; and

23 (f) Not be provided to a participant by an agency if the agency provides any other

1 Michelle P. waiver service to the participant.

2 (5)(a) Case management for any participant who begins receiving Michelle P. waiver  
3 services after the effective date of this administrative regulation shall be conflict free  
4 except as allowed in paragraph (b) of this subsection.

5 (b)1. Conflict free case management shall be a scenario in which a provider including  
6 any subsidiary, partnership, not-for-profit, or for-profit business entity that has a  
7 business interest in the provider who renders case management to a participant shall  
8 not also provide another 1915(c) home and community based waiver service to that  
9 same participant unless the provider is the only willing and qualified Michelle P. waiver  
10 provider within thirty (30) miles of the participant's residence.

11 2. An exemption to the conflict free case management requirement shall be granted  
12 if:

13 a. A participant requests the exemption;

14 b. The participant's case manager provides documentation of evidence to the  
15 department that there is a lack of a qualified case manager within thirty (30) miles of the  
16 participant's residence;

17 c. The participant or participant's representative and case manager signs a  
18 completed MAP - 531 Conflict-Free Case Management Exemption; and

19 d. The participant, participant's representative, or case manager uploads the  
20 completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA  
21 [portal].

22 3. If a case management service is approved to be provided despite not being  
23 conflict free, the case management provider shall document conflict of interest



protections, separating case management and service provision functions within the provider entity, and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives Michelle P. waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management Michelle P. waiver services.

(6) Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

Section 10. Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section shall:

(a) Be an overall limit applied to all services whether PDS[~~GDO services~~], Michelle P.

1 waiver services not provided as PDS~~[via CDO]~~, or a combination of PDS~~[CDO]~~ and  
2 Michelle P. waiver services; and

3 (b) Equal \$63,000 per year.

4 Section 11~~[9]~~ Incident Reporting Process. (1)(a) There shall be two (2) classes of  
5 incidents.

6 (b) The following shall be the two (2) classes of incidents:

7 1. An incident; or

8 2. A critical incident.

9 (2) An incident shall be any occurrence that impacts the health, safety, welfare, or  
10 lifestyle choice of a participant and includes:

11 (a) A minor injury;

12 (b) A medication error without a serious outcome; or

13 (c) A behavior or situation that is not a critical incident.

14 (3) A critical incident shall be an alleged, suspected, or actual occurrence of an  
15 incident that:

16 (a) Can reasonably be expected to result in harm to a participant; and

17 (b) Shall include:

18 1. Abuse, neglect, or exploitation;

19 2. A serious medication error;

20 3. Death;

21 4. A homicidal or suicidal ideation;

22 5. A missing person; or

23 6. Other action or event that the provider determines may result in harm to the

1 participant[documented on a Michelle P. Waiver Incident Report Form].

2 (4)(a) If an incident occurs, the Michelle P. waiver provider shall:

3 1. Report the incident by making an entry into the MWMA [portal] that includes  
4 details regarding the incident; and

5 2. Be immediately assessed for potential abuse, neglect, or exploitation.

6 (b) If an assessment of an incident indicates that the potential for abuse, neglect, or  
7 exploitation exists:

8 1. The individual who discovered or witnessed the incident shall immediately act to  
9 ensure the health, safety, or welfare of the at-risk participant;

10 2. The incident shall immediately be considered a critical incident;

11 3. The critical incident procedures established in subsection (5) of this section shall  
12 be followed; and

13 4. The Michelle P. waiver provider shall report the incident to the participant's case  
14 manager and participant's guardian, if the participant has a guardian, within twenty-four  
15 (24) hours of discovery of the incident.

16 (5)(a) If a critical incident occurs, the individual who witnessed the critical incident or  
17 discovered the critical incident shall immediately act to ensure the health, safety, and  
18 welfare of the at-risk participant.

19 (b) If the critical incident:

20 1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be  
21 immediately reported via the MWMA [portal by the individual who witnessed or  
22 discovered the critical incident]; or

23 2. Does not require reporting of abuse, neglect, or exploitation, the critical incident

1 shall be reported via the MWMA ~~[portal by the individual who witnessed or~~  
2 ~~discovered the critical incident]~~ within eight (8) hours of discovery.

3 (c) The Michelle P. waiver provider shall:

4 1. Conduct an immediate investigation and involve the participant's case manager in  
5 the investigation; and

6 2. Prepare a report of the investigation, which shall be recorded in the MWMA  
7 ~~[portal]~~ and shall include:

8 a. Identifying information of the participant involved in the critical incident and the  
9 person reporting the critical incident;

10 b. Details of the critical incident; and

11 c. Relevant participant information including:

12 (i) A listing of recent medical concerns;

13 (ii) An analysis of causal factors; and

14 (iii) Recommendations for preventing future occurrences.

15 (6)(a) Following a death of a participant receiving Michelle P. waiver services from a  
16 Michelle P. waiver provider, the Michelle P. waiver provider shall enter mortality data  
17 documentation into the MWMA ~~[portal]~~ within fourteen (14) days of the death.

18 (b) Mortality data documentation shall include:

19 1. The participant's person-centered service plan at the time of death;

20 2. Any current assessment forms regarding the participant;

21 3. The participant's medication administration records from all service sites for the  
22 past three (3) months along with a copy of each prescription;

23 4. Progress notes regarding the participant from all service elements for the past

1 thirty (30) days;

2 5. The results of the participant's most recent physical exam;

3 6. All incident reports, if any exist, regarding the participant for the past six (6)

4 months;

5 7. Any medication error report, if any exists, related to the participant for the past six

6 (6) months;

7 8. The most recent psychological evaluation of the participant;

8 9. A full life history of the participant including any update from the last version of the

9 life history;

10 10. Names and contact information for all staff members who provided direct care to

11 the participant during the last thirty (30) days of the participant's life;

12 11. Emergency medical services notes regarding the participant if available;

13 12. The police report if available;

14 13. A copy of:

15 a. The participant's advance directive, medical order for scope of treatment, living  
16 will, or health care directive if applicable;

17 b. Any functional assessment of behavior or positive behavior support plan regarding  
18 the participant that has been in place over any part of the past twelve (12) months; and

19 c. The cardiopulmonary resuscitation and first aid card for any Michelle P. waiver  
20 provider's staff member who was present at the time of the incident that resulted in the  
21 participant's death;

22 14. A record of all medical appointments or emergency room visits by the participant  
23 within the past twelve (12) months; and

1 15. A record of any crisis training for any staff member present at the time of the  
2 incident that resulted in the participant's death.

3 (7)(a) A Michelle P. waiver provider shall report a medication error to the MWMA  
4 [portal].

5 (b) A Michelle P. waiver provider shall document all medication error details on a  
6 medication error log retained on file at the Michelle P. waiver provider site~~[(2) There~~  
7 ~~shall be three (3) classes of incidents including:~~

8 ~~(a) A class I incident which shall:~~

9 ~~1. Be minor in nature and not create a serious consequence;~~

10 ~~2. Not require an investigation by the provider agency;~~

11 ~~3. Be reported to the case manager or support broker within twenty four (24) hours;~~

12 ~~4. Be reported to the guardian as directed by the guardian; and~~

13 ~~5. Be retained on file at the provider and case management or support brokerage~~  
14 ~~agency;~~

15 ~~(b) A class II incident which shall:~~

16 ~~1. Be serious in nature;~~

17 ~~2. Involve the use of physical or chemical restraints;~~

18 ~~3. Require an investigation which shall be initiated by the provider agency within~~  
19 ~~twenty four (24) hours of discovery;~~

20 ~~4. Be reported by the provider agency to:~~

21 ~~a. The case manager or support broker within twenty four (24) hours;~~

22 ~~b. The guardian within twenty four (24) hours;~~

23 ~~c. The department within ten (10) calendar days of discovery, and shall include a~~

~~complete written report of the incident investigation and follow up; and~~

~~(c) A class III incident which shall:~~

~~1.a. Be grave in nature;~~

~~b. Involve suspected abuse, neglect, or exploitation;~~

~~c. Involve a medication error which requires a medical intervention; or~~

~~d. Be a death;~~

~~2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and~~

~~3. Be reported by the provider agency to:~~

~~a. The case manager or support broker within eight (8) hours of discovery;~~

~~b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209 or 620.030;~~

~~c. The guardian within eight (8) hours of discovery; and~~

~~d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.~~

~~(3) Documentation with a complete written report for a death shall include:~~

~~(a) The recipient's current plan of care;~~

~~(b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;~~

~~(c) The recipient's current crisis plan;~~

~~(d) Medication administration review forms for the current and previous month;~~

1 ~~(e) Staff notes from the current and previous month including details of physician and~~  
2 ~~emergency room visits;~~

3 ~~(f) Any additional information requested by the department necessary to determine if~~  
4 ~~a corrective action needs to be taken by the Cabinet for Health and Family Services~~  
5 ~~against the provider;~~

6 ~~(g) A coroner's report when received; and~~

7 ~~(h) If performed, an autopsy report when received].~~

8 Section 12.~~[40.]~~ Michelle P. Waiver Program Waiting List. (1)(a) If a slot is not  
9 available for an individual to enroll in the Michelle P. Waiver Program at the time of  
10 applying for the program, the individual shall be placed on a statewide Michelle P.  
11 Waiver Program waiting list:

12 1. In accordance with subsection (2) of this section; and

13 2. Maintained by the department.

14 (b) Each slot for the Michelle P. Waiver Program shall be contingent upon:

15 1. Biennium budget funding;

16 2. Federal financial participation; and

17 3. Centers for Medicare and Medicaid Services approval.

18 (2)~~[(a)]~~ For an individual to be placed on the Michelle P. Waiver Program waiting list,  
19 the individual or individual's representative shall:

20 (a) Apply for 1915(c) home and community based waiver services via the MWMA  
21 [portal]; and

22 (b) Complete and upload to the MWMA [portal] a MAP – 115 Application Intake –  
23 Participant Authorization~~[shall submit to the department a completed Application for~~



1 ~~MPW Waiver Waiting List.~~

2 ~~(b)1. The department shall place the individual on the waiting list if the department~~  
3 ~~confirms that the MAP-621, Application for MPW Waiver Waiting List, has been~~  
4 ~~correctly completed.~~

5 ~~2. If the department determines that a MAP-621, Application for MPW Waiver~~  
6 ~~Waiting List, has not been completed correctly, the department shall return the form to~~  
7 ~~the applicant notifying the applicant of the incorrectness or missing information].~~

8 (3) Individuals shall be placed on the Michelle P. Waiver Program waiting list in the  
9 chronological order that each application is received and validated by the department.

10 (4) The department shall send a written notice of placement on the Michelle P.  
11 Waiver Program waiting list to the:

12 (a) Applicant; or

13 (b) Applicant's legal representative.

14 (5) At least annually, the department shall contact each individual, or individual's  
15 legal representative, on the Michelle P. Waiver Program waiting list to:

16 (a) Verify the accuracy of the individual's information; and

17 (b) Verify whether the individual wishes to continue to pursue enrollment in the  
18 Michelle P. Waiver Program.

19 (6) The department shall remove an individual from the Michelle P. Waiver Program  
20 waiting list if:

21 (a) The individual is deceased; or

22 (b) The department notifies the individual or the individual's legal representative of  
23 potential funding approved to enroll the individual in the Michelle P. Waiver Program

1 and the individual or individual's legal representative:

2 1. Declines the potential funding for enrollment in the program; and

3 2. Does not request to remain on the Michelle P. Waiver Program waiting list.

4 (7) If, after being notified by the department of potential funding approved to enroll  
5 the individual in the Michelle P. Waiver Program, the individual or individual's legal  
6 representative declines the potential funding but requests to remain on the Michelle P.  
7 Waiver Program waiting list, the individual shall:

8 (a) Lose his or her current position on the waiting list; and

9 (b) Be moved to the bottom of the waiting list.

10 (8) If the department removes an individual from the Michelle P. Waiver Program  
11 waiting list pursuant to this section, the department shall send written notice of the  
12 removal to:

13 (a) The individual or the individual's legal representative; and

14 (b) The individual's Michelle P. Waiver Program coordination provider if the individual  
15 has a Michelle P. Waiver Program coordination provider.

16 (9) The removal of an individual from the Michelle P. Waiver Program waiting list  
17 shall not preclude the individual from applying for Michelle P. Waiver Program  
18 participation in the future.

19 (10)(a) An individual who is placed on the Michelle P. Waiver Program waiting list  
20 shall be informed about and told how to apply for Medicaid state plan services for which  
21 the individual might qualify.

22 (b) An individual who is under twenty-one (21) years of age and who is placed on the  
23 Michelle P. Waiver Program waiting list shall also be informed about Early and Periodic

1 Screening, Diagnostic, and Treatment services.

2 Section 13.~~[11.]~~ Use of Electronic Signatures. ~~[(4)]~~ The creation, transmission,  
3 storage, and other use of electronic signatures and documents shall comply with the  
4 requirements established in KRS 369.101 to 369.120.~~[(2) A provider that chooses to~~  
5 ~~use electronic signatures shall:~~

6 ~~(a) Develop and implement a written security policy that shall:~~

7 ~~1. Be adhered to by each of the provider's employees, officers, agents, and~~  
8 ~~contractors;~~

9 ~~2. Identify each electronic signature for which an individual has access; and~~

10 ~~3. Ensure that each electronic signature is created, transmitted, and stored in a~~  
11 ~~secure fashion;~~

12 ~~(b) Develop a consent form that shall:~~

13 ~~1. Be completed and executed by each individual using an electronic signature;~~

14 ~~2. Attest to the signature's authenticity; and~~

15 ~~3. Include a statement indicating that the individual has been notified of his or her~~  
16 ~~responsibility in allowing the use of the electronic signature; and~~

17 ~~(c) Provide the department, immediately upon request, with:~~

18 ~~1. A copy of the provider's electronic signature policy;~~

19 ~~2. The signed consent form; and~~

20 ~~3. The original filed signature.]~~

21 Section 14.~~[12.]~~ Reimbursement. (1) The following Michelle P. waiver services, alone  
22 or in any combination, shall be limited to forty (40) hours per calendar week:

23 (a) Homemaker;

- (b) Personal care;
- (c) Attendant care;
- (d) Supported employment;
- (e) Adult day health care;
- (f) Adult day training;
- (g) Community living supports;
- (h) Physical therapy;
- (i) Occupational therapy;
- (j) Speech therapy; and
- (k) Behavior supports.

(2) Respite services shall not exceed \$4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.

(4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The unit amounts, ~~[following rates shall be the]~~ fixed upper payment rate limits, and other limits established in the following table shall apply:

Service	Fixed Upper Payment Rate Limit	Unit of Service
Case Management	\$50.00	15 minutes
Respite	\$4,000 per calendar year	15 minutes
Homemaker	\$6.50	15 minutes

Personal Care	\$7.50	15 minutes
Attendant Care	\$2.90	15 minutes
Supported Employment	\$5.54	15 minutes
Adult Day Health Care	\$2.75	15 minutes
Adult Day Training	\$2.75	15 minutes
Community Living Supports	\$5.54	15 minutes
Physical Therapy	\$22.17	15 minutes
Occupational Therapy	\$22.17	15 minutes
Speech Therapy	\$22.17	15 minutes
Behavior Supports	\$33.25	15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year	
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)	15 minutes
Support Broker	\$265.00	One (1) month

1       Section **15. Corrective Action Plans. (1)(a) If a provider receives a findings**  
 2       **report from the department indicating that an issue of non-compliance has been**  
 3       **cited, the provider shall have ten (10) business days from the date on the letter**  
 4       **that accompanied the findings report to submit a corrective action plan to the**  
 5       **department in accordance with the instructions in the letter.**

1 (b) If a provider is notified by the department that the corrective action plan  
2 was not approved, the provider shall submit a revised corrective action plan to  
3 the department within ten (10) business days of the date on the letter informing  
4 that the initial corrective action plan was not approved and in accordance with  
5 the instructions in the letter.

6 (c)1. If a provider is notified by the department that the second corrective ac-  
7 tion plan was not approved, the provider shall submit a revised corrective action  
8 plan to the department within five (5) business days from the date on the letter  
9 notifying that the second corrective action plan was not approved.

10 2. If the third corrective action plan submitted to the department is not ap-  
11 proved, the department shall:

12 a. Not certify the provider if the provider is new;

13 b. Not recertify the provider if the provider is an existing provider; or

14 c. Terminate the provider's certification.

15 3. A provider shall have the right to appeal a termination in accordance with  
16 907 KAR 1:671.

17 4. A citation of an issue of non-compliance shall not be appealable.

18 (2) The department shall have up to thirty (30) business days to review a cor-  
19 rective action plan.

20 Section 16. Provider Certification. The following shall apply regarding Michelle  
21 P. waiver provider certification periods:

<u>Provider Status at Recertification Date</u>	<u>New Certification Period Based on Status at Recertification Date</u>
<u>Zero citations during the most recent recertification review and have successfully implemented any approved corrective action plan for any citation issued during the recertification period if any citation was issued</u>	<u>One (1) year</u>

<p><u>Received citations during the most recent recertification review or has existing (open) citations without either an accepted corrective action plan or a successfully implemented corrective action plan</u></p>	<p><u>Six (6) Months</u></p> <p><u>(1) Upon approval of corrective action plan, the department shall monitor for successful implementation within thirty (30) days.</u></p> <p><u>(2) Upon successful implementation of corrective action plan, the department shall extend recertification to balance of one (1) year.</u></p> <p><u>(3) If provider fails to implement an approved corrective action plan, the department shall extend the timeframe for implementation or consider non-renewal or termination.</u></p> <p><u>(4) If provider has not submitted an approved corrective action plan after the three (3) allowed attempts (see above), the department shall consider non-renewal or termination.</u></p>
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1     Section 17. Voluntary Moratorium. (1)(a) Upon the department becoming aware  
2 of a potential health, safety, or welfare violation, the department shall contact the  
3 provider's executive director to:

- 4     1. Officially notify the provider of the option for a voluntary moratorium; and  
5 2. Discuss the health, safety, or welfare concern.

6     (b) The department's notice to the provider shall initially be made via phone fol-  
7 lowed up by notice via electronic means.

8     (c) Upon receipt of the electronic notice, the provider shall formally accept or  
9 not accept the voluntary moratorium option by:

- 10     1. Signing the document provided; and  
11 2. Returning it to the department within two (2) business days of receipt by  
12 electronic means as directed in the electronic notice.

13     (2) If the provider:

14     (a) Agrees to a voluntary moratorium, the department shall proceed as estab-  
15 lished in 907 KAR 7:005 regarding a voluntary moratorium pending an investiga-  
16 tion; or

17     (b) Does not agree to a voluntary moratorium, the department shall:

- 18     1. Terminate the provider in accordance with 907 KAR 7:005; and  
19 2. Notify in writing the provider's executive director at the agency's primary  
20 business address of the:

21     a. Reason for termination; and

22     b. Provider's right to appeal the termination within:

23     (i) Two (2) business days of receipt of the written non-acceptance of the

1 voluntary moratorium; or

2 (ii) Five (5) business days of the initial notice sent to the provider if the provid-  
3 er did not respond to the notice of the voluntary moratorium option.

4 (3) A notice of termination to the provider shall be sent via a delivery method  
5 that records the sending and receipt of the notice.

6 (4)(a) If a provider is terminated, the department shall:

7 1. Monitor the provider's efforts to ensure the health, safety, and welfare of par-  
8 ticipants in need of being transitioned to a new provider; and

9 2. Provide technical assistance to the provider during the transition.

10 (b) A provider shall:

11 1. Fully cooperate with the department's transition assistance team and any  
12 other state government agency involved;

13 2. Provide full access to its records and information pertaining to the partici-  
14 pants being transitioned; and

15 3. Be responsible for facilitating the effective transition of participants to an-  
16 other provider or providers of the participant's choice prior to the termination  
17 date.

18 (c) A provider's termination date shall be stated in the termination notice.

19 (d) A participant's case manager shall help ensure that the participant's transi-  
20 tion to a new provider or providers is completed prior to the termination date.

21 Section 18.~~[43.]~~ Federal Financial Participation and Approval. The department's  
22 coverage and reimbursement for services pursuant to this administrative regulation  
23 shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and  
(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement.

Section ~~19.[16.]~~[14.] Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a participant~~[Michelle P. waiver recipient or a consumer]~~ shall be in accordance with 907 KAR 1:563.

Section ~~20.[17.]~~[15.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "MAP – 115 Application Intake – Participant Authorization", May 2015;
- (b) "MAP – 116 Service Plan – Participant Authorization", May 2015;
- (c) "MAP – 531 Conflict-Free Case Management Exemption", **October** ~~[May]~~ 2015;
- ~~(d) ["Person-Centered Planning: Guiding Principles", March 2005;~~
- ~~(b) "MAP-24, Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services Memorandum", August 2008;~~
- ~~(e)] "MAP 95 Request for Equipment Form", June 2007;~~
- ~~[(d) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", July 2008;]~~
- (e) "MAP - 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015~~[July 2008]~~;
- (f) "MAP 351,~~[Department for Medicaid Services,]~~ Medicaid Waiver Assessment", July 2015~~[2008]~~;
- (g) "MAP-2000, Initiation/Termination of Participant-Directed Services~~[Consumer Directed Option (CDO)]~~", June 2015~~[July 2008]~~;
- (h) "MAP 10, Waiver Services Physician's Recommendation", June 2015~~[August~~

2014]; and

(i) "Kentucky Participant-Directed Services~~[Consumer Directed Option]~~

Employee/Provider Contract", June 2015~~[August 2010;~~

~~(j) "Michelle P. Waiver Incident Report Form", May 2013; and~~

~~(k) "MAP-621 Application for MPW Waiver Waiting List", February 2014].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a)[,] At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at

<http://www.chfs.ky.gov/dms/incorporated.htm>.

907 KAR 1:835

REVIEWED:

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Date

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Lisa Lee, Commissioner  
Department for Medicaid Services

APPROVED:

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Date

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Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Service

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:835

Contact person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage and reimbursement provisions requirements regarding Michelle P. waiver program services. The Michelle P. waiver program is a program which enables individuals who have care needs that qualify them for receiving services in an intermediate care facility for individuals with an intellectual disability (ICF IID) to reside in and receive services in a community setting rather than in an institutional setting.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. The amendments include establishing new federally-mandated case management requirements (that case management be free from conflict of interest); establishing federally-mandated requirements regarding the plan - the new term is person-centered service plan and the prior term was plan of care - that is used to identify the amount, duration, and types of services that a participant in the program receives (the plan is now called a person-centered service plan); requiring, as federally mandated, that an online portal (Medicaid Waiver Management Application or MWMA) be used to apply for admission to the program and to complete forms and documents associated with the program; adding new rights that must be guaranteed for individuals receiving services; requiring providers to check the caregiver misconduct registry before hiring an individual and prohibits the hiring of anyone listed on the registry; narrowing the types of incidents to be reported from three (3) classes to two (2) and revising the incident reporting process by requiring incidents to be documented online in the new MWMA; revising the application process by requiring it to be done via the new MWMA; incorporating new forms by reference (a MAP -115 Application Intake - Participant Authorization used by individual to designate an individual to apply for 1915(c) home and community based waiver services via the MWMA on behalf of the individual; a MAP – 116 Service Plan –

Participant Authorization used by an individual to authorize someone to represent them in person-centered service plan development and entry in the MWMA; and a MAP-531 Conflict Free Case Management Exemption form used to request an exempt from the conflict-free case management requirement; and updating a couple of other forms. Additionally, the amendment deletes incorporated material that is being obsoleted due to implementation of a new online portal (MWMA).

The amendment after comments clarifies that documentation of various services must be entered into the MWMA; clarifies that a criminal background check must be one performed by the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the potential PDS provider lived outside of Kentucky during the twelve (12) months prior to being a provider; adds a check of the Central Registry pursuant to 922 KAR 1:470 to the screening checks; clarifies that services by a support broker must also be conflict free; establishes corrective action plan provisions; establishes provisions regarding provider recertification (certification periods are tied to provider compliance/failure to comply); establishes requirements regarding voluntary moratoriums (during which a provider cannot provide services to new participants); and revises the MAP 531, Conflict Free Case Management Exemption by inserting a statement requiring documentation of denials of qualified providers within thirty (30) miles from the participant's residence.

(b) The necessity of the amendment to this administrative regulation: The primary amendments (revising the case management requirements, establishing person-centered service plan requirements, and requiring a new online portal (MWMA) to be used) are mandated by the Centers for Medicare and Medicaid Services (CMS) via a CMS rule published January 2015. Requiring providers to check the caregiver misconduct registry regarding potential staff and to not hire anyone listed on the registry is a safeguard to enhance participant safety and welfare. Reducing the classes of incidents is an effort to synchronize incident reporting requirements among DMS's 1915(c) home and community based waiver services programs. Introducing new incorporated material is necessary to allow participants to designate individuals to use the new online portal (MWMA) and/or perform related activities.

Clarifying that documentation regarding services must be entered into the MWMA is necessary for clarity. The criminal background check and Central Registry check provisions are necessary to protect the health, safety, and welfare of Michelle P. waiver program participants. Clarifying that support broker services must be conflict free is necessary to comply with a federal mandate. DMS is establishing corrective action plan provisions, certification period provisions, and also voluntary moratorium provisions in the amendment after comments in response to correspondence from an attorney (subsequent to the filing of this administrative regulation) on behalf of a provider claiming that DMS lacks the authority to enforce such provisions without them being stated in administrative regulation. Revising the MAP 531, Conflict Free Case Management Exemption is necessary to document that no qualified provider is available.

(c) How the amendment conforms to the content of the authorizing statutes: The

amendments conform to the content of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the Michelle P. waiver program and by enhancing participant safety and welfare.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the Michelle P. waiver program and by enhancing participant safety and welfare.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently 284 providers participating in the Michelle P. Waiver Program and over 9,500 individuals receiving services via the program. DMS estimates that the number of individuals who could currently qualify to be placed on the program's waiting list could be 283.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to ensure they comply with the conflict free case management requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals receiving services will benefit from greater involvement and direction in the types of services they receive as well as when and where they receive the services which will enhance their independence as well as assimilation in their local community.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendments to this administrative regulation will be budget neutral on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly



or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies equally to all regulated entities/individuals.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation #: 907 KAR 1:835

Contact: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.730(b), and 42 C.F.R. 441.725.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not anticipated to generate a higher level of revenues for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response in (a) above also applies here.

(c) How much will it cost to administer this program for the first year? DMS anticipates that the amendments will be budget neutral for the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendments will be budget neutral for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 907 KAR 1:835

Contact: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.730(b) and 42 C.F.R. 441.725.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Among the mandates in 42 C.F.R. 441.730(b) are that services to waiver participants are free from conflict of interest. In the context of the Michelle P. waiver program that means that the individual who provides case management to a given waiver participant provide actual Michelle P. waiver services or work for an entity that provides actual Michelle P. waiver services or entity that has a business interest in a provider of actual Michelle P. waiver services.

42 C.F.R. 447.425 establishes the person-centered service plan requirements which are many but the underlying requirement is that the plan be customized to the individual's needs (based on input from the individual or representatives of the individual among other parties) and promote/enhance the individual's independence and choice in their services and activities as well as integration their community.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter, additional or different requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY SERVICES  
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:835

Summary of Material Incorporated by Reference

(1) The Department for Medicaid Services (DMS) is revising the following material incorporated by reference:

“MAP – 531 Conflict-Free Case Management Exemption”. The October 2015 is replacing the May 2015. This is a one (1) page form used by individuals to request an exemption from the requirement that case management be conflict free. The revision adds a statement requiring documentation of denials from qualified providers within thirty (30) miles from the participant’s residence.

One (1) page is incorporated by reference.